

## Reimbursement Contract

Contract Number: R-38772

Road: SR-28

Des: 1592968 Phase 2

### UNOFFICIAL DETOUR REIMBURSEMENT CONTRACT

**THIS CONTRACT** ("CONTRACT") is made and entered by and between the State of Indiana, acting by and through the **Indiana Department of Transportation** (hereinafter referred to as "INDOT") and Tippecanoe County, acting by and through its proper officials (hereinafter referred to as the "LOCAL GOVERNMENT"), jointly referred to as the "Parties" and individually as a "Party."

#### WITNESSETH

**WHEREAS**, because of construction project # 1592968 impacting the LOCAL GOVERNMENT, INDOT and the LOCAL GOVERNMENT have designated an unofficial detour route, which is attached hereto as **Exhibit A** and incorporated herein; and

**WHEREAS**, the construction project which necessitated the establishment of such routes has been completed; and

**WHEREAS**, pursuant to IC §8-23-21-2, INDOT is required to restore the unofficial detour route to its pre-designation condition or to the condition set forth in a contract between the Parties; and

**WHEREAS**, INDOT and the LOCAL GOVERNMENT have agreed that INDOT shall reimburse the LOCAL GOVERNMENT an amount not to exceed \$ \_\_\_\_\_ for the restoration of the unofficial detour route to its pre-designation condition, in lieu of INDOT restoring the unofficial detour route;

**NOW THEREFORE**, in consideration of the promises and the mutual agreements and covenants herein contained (the adequacy of which consideration as to each of the Parties to this CONTRACT is hereby mutually acknowledged), and other good and valuable consideration, and intending to be legally bound, INDOT and the LOCAL GOVERNMENT hereby covenant and agree as follows:

**Section 1.**     Restoration of Unofficial Detour Route

The LOCAL GOVERNMENT shall restore the unofficial detour described in **Exhibit A** to its pre-designation condition (hereinafter the "Project").

**Section 2.**     Compensation from INDOT

In lieu of constructing the Project, INDOT shall pay to the LOCAL GOVERNMENT an amount not to exceed \$ 88,849.74 for the costs of the Project. The LOCAL GOVERNMENT shall be responsible for any and all costs of the Project which exceed the amount set forth in this Section 2. The term of this CONTRACT shall be for two (2) years or until the amount is paid to the LOCAL GOVERNMENT, whichever occurs first.

**Section 3. Design and Construction**

The LOCAL GOVERNMENT shall award the construction contract or perform the work itself, in accordance with all applicable bidding statutes and requirements.

**Section 4. Construction and Project Management Compensation Procedure**

The LOCAL GOVERNMENT shall submit vouchers to INDOT for the work completed. Upon approval of the voucher by INDOT, INDOT shall make such payment to the LOCAL GOVERNMENT. Such approval shall not be unreasonably withheld.

**Section 5. Non-Discrimination**

(1) This CONTRACT is enacted pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the Civil Rights Act of 1964 as amended, the Age Discrimination in Employment Act, and the Americans with Disabilities Act. Breach of this covenant may be regarded as a material breach of this CONTRACT, but nothing in this covenant shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the LOCAL GOVERNMENT or any subcontractor.

Under IC §22-9-1-10 the LOCAL GOVERNMENT covenants that it shall not discriminate against any employee or applicant for employment relating to this CONTRACT with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, or status as a veteran.

(2) The LOCAL GOVERNMENT understands that INDOT is a recipient of federal funds. Pursuant to that understanding, the LOCAL GOVERNMENT agrees that if the LOCAL GOVERNMENT employs fifty (50) or more employees and does at least \$50,000.00 worth of business with the State and is not exempt, the LOCAL GOVERNMENT will comply with the affirmative action reporting requirements of 41 CFR 60-1.7. The LOCAL GOVERNMENT shall comply with Section 202 of executive order 11246, as amended, 41 CFR 60-250, and 41 CFR 60-741, as amended, which are incorporated herein by specific reference. Breach of this covenant may be regarded as a material breach of this CONTRACT.

It is the policy of INDOT to assure full compliance with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act and Section 504 of the Vocational Rehabilitation Act and related statutes and regulations in all programs and activities. Title VI and related statutes require that no person in the United States shall on the grounds of race, color or national origin be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial

assistance. (INDOT's nondiscrimination enforcement is broader than the language of Title VI and encompasses other State and Federal protections. INDOT's nondiscrimination enforcement shall include the following additional grounds: sex, sexual orientation, gender identity, ancestry, age, income status, religion, disability, limited English proficiency, or status as a veteran.)

(3) During the performance of this CONTRACT, the LOCAL GOVERNMENT, for itself, its assignees and successors in interest (hereinafter referred to as the "LOCAL GOVERNMENT") agrees to the following assurances under Title VI of the Civil Rights Act of 1964:

(a). Compliance with Regulations: The LOCAL GOVERNMENT shall comply with the regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation, Title 49 CFR Part 21, as they may be amended from time to time (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this CONTRACT.

(b). Nondiscrimination: The LOCAL GOVERNMENT, with regard to the work performed by it during the CONTRACT, shall not discriminate on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, or status as a veteran in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The LOCAL GOVERNMENT shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulation, including employment practices when the contract covers a program set forth in Appendix B of the Regulations.

(c). Solicitations for Subcontracts, Including Procurements of Materials and Equipment: In all solicitations either by competitive bidding or negotiation made by the LOCAL GOVERNMENT for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the LOCAL GOVERNMENT of the LOCAL GOVERNMENT's obligations under this CONTRACT, and the Regulations relative to nondiscrimination on the grounds of race, color, sex, sexual orientation, gender identity, national origin, religion, disability, ancestry, income status, limited English proficiency, or status as a veteran.

(d). Information and Reports: The LOCAL GOVERNMENT shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Indiana Department of Transportation and Federal Highway Administration to be pertinent to ascertain compliance with such Regulations, orders and instructions. Where any information required of a LOCAL GOVERNMENT is in the exclusive possession of another who fails or refuses to furnish this information, the LOCAL GOVERNMENT shall so certify to the Indiana Department of Transportation or the Federal Highway Administration as appropriate, and shall set forth what efforts it has made to obtain the information.

(e). Sanctions for Noncompliance: In the event of the LOCAL GOVERNMENT's noncompliance with the nondiscrimination provisions of this CONTRACT, the Indiana Department of Transportation shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

(a) withholding payments to the LOCAL GOVERNMENT under the CONTRACT until the LOCAL GOVERNMENT complies, and/or (b) cancellation, termination or suspension of the CONTRACT, in whole or in part.

(f). Incorporation of Provisions: The LOCAL GOVERNMENT shall include the provisions of paragraphs a through e in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto.

The LOCAL GOVERNMENT shall take such action with respect to any subcontract or procurement as the Indiana Department of Transportation, the Federal Highway Administration, or the Office of Federal Contract Compliance Programs may direct as a means of enforcing such provisions including sanctions for non-compliance, provided, however, that in the event the LOCAL GOVERNMENT becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the LOCAL GOVERNMENT may request the Indiana Department of Transportation to enter into such litigation to protect the interests of the Indiana Department of Transportation, and, in addition, the LOCAL GOVERNMENT may request the United States of America to enter into such litigation to protect the interests of the United States of America.

**Section 6.**     Modification/Entire CONTRACT

This CONTRACT may be amended from time to time hereafter only in writing executed by all parties, and submitted to the Indiana Attorney General for approval as to form and legality. No verbal change, modification, or amendment shall be effective unless in writing and signed by the Parties and the Attorney General. The provisions hereof constitute the entire CONTRACT between the Parties and supersede any verbal statements, representations or warranties stated or implied.

**Section 7.**     Governing Laws

This CONTRACT shall be governed, construed and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

**Section 8.**     Subsequent Acts

The Parties agree that they will, at any time and from time to time, from and after the execution of this CONTRACT, upon request, perform or cause to be performed such acts, and execute, acknowledge and deliver or cause to be executed, acknowledged and delivered such documents as may be reasonably required for the performance by the Parties of any of their obligations under this CONTRACT.

**Section 9.**     Non-Waiver

No delay or failure by either Party to exercise any right hereunder, and no partial or single

exercise of any such right, shall constitute a waiver of that or any other right, unless otherwise expressly provided herein.

**Section 10. Headings**

Headings in this CONTRACT are for convenience only and shall not be used to interpret or construe its provisions.

**Section 11. Assignment**

This CONTRACT shall be binding upon and shall inure to the benefits of the Parties, their legal representatives, successors and assigns, provided, however, because this CONTRACT is personal to each of the Parties hereto, no Party may sell, assign, delegate, or transfer this CONTRACT or any portion thereof, including, without limitation, any rights, title, interests, remedies, powers, and/or duties hereunder without the express written consent of the other Party.

**Section 12. Severability**

The invalidity of any section, subsection, clause or provision of this CONTRACT shall not affect the validity of the remaining sections, subsections, clauses or provisions of this CONTRACT.

**Section 13. Attorney General Approval**

This CONTRACT shall not be effective unless and until approved by the Attorney General of Indiana, or their authorized representatives, as to legality and form.

**Section 14. Authorizations**

Any person executing this CONTRACT in a representative capacity hereby warrants that they have been duly authorized by their principal to execute this CONTRACT on such principal's behalf.

**Section 15. Force Majeure**

In the event that either Party is unable to perform any of its obligations under this CONTRACT or to enjoy any of its benefits because of natural disaster or decrees of governmental bodies not the fault of the affected Party (hereinafter referred to as a "Force Majeure Event"), the Party who has been so affected shall immediately or as soon as is reasonably possible under the circumstances give notice to the other Party and shall do everything possible to resume performance. Upon receipt of such notice, all obligations under this CONTRACT shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Force Majeure Event, the Party whose ability to perform has not been so affected may, by giving written notice, terminate this CONTRACT.

**Section 16. Substantial Performance**

This CONTRACT shall be deemed to have been substantially performed only when fully performed according to its terms and conditions and any modification thereof.

**Section 17. Indemnification**

The LOCAL GOVERNMENT agrees to indemnify, defend, exculpate, and hold harmless INDOT, its agents, officials and employees from any liability, loss, damage, injuries, or other casualties of whatever kind, or by whomsoever caused, due to the performance of any of the obligations under this CONTRACT, whether due in whole or in part to the negligent acts or omissions of INDOT, its agents, officials, or employees; or the LOCAL GOVERNMENT, its agents, officials, or employees, or other persons engaged in the performance of the work; or the joint or several acts or omissions of any of them; including any claims arising out of the Worker's Compensation Act or any other law, ordinance, order, or decree. The LOCAL GOVERNMENT further agrees to pay all reasonable expenses and attorney's fees incurred by or imposed on INDOT in connection herewith in the event that the LOCAL GOVERNMENT shall default under the provisions of this Section. INDOT shall **not** provide indemnification to the LOCAL GOVERNMENT.

**Section 18. Drug-Free Workplace Certification**

As required by Executive Order No. 90-5 dated April 12, 1990, issued by the Governor of Indiana, the LOCAL GOVERNMENT hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. The LOCAL GOVERNMENT will give written notice to INDOT within ten (10) days after receiving actual notice that the LOCAL GOVERNMENT, or an employee of the LOCAL GOVERNMENT in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of the certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the CONTRACT and/or debarment of contracting opportunities with the State for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this CONTRACT is in excess of \$25,000.00, the LOCAL GOVERNMENT certifies and agrees that it will provide a drug-free workplace by:

- A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the LOCAL GOVERNMENT's workplace and specifying the actions that will be taken against employees for violations of such prohibition; and
- B. Establishing a drug-free awareness program to inform its employees of (1) the dangers of drug abuse in the workplace; (2) the LOCAL GOVERNMENT's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and
- C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment, the employee will (1) abide by the terms of the statement; and (2) notify the LOCAL GOVERNMENT of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction; and



- D. Notifying the State in writing within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction; and
- E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) taking appropriate personnel action against the employee, up to and including termination; or (2) requiring such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and
- F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

**Section 19. Funding Cancellation**

As required by Financial Management Circular 2007-1 and IC §5-22-17-5, when the Director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this CONTRACT, it shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

**Section 20. Debarment and Suspension**

- A. The LOCAL GOVERNMENT certifies by entering into this CONTRACT that neither it nor its principals nor any of its subcontractors are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this CONTRACT by any federal agency or by any department, agency or political subdivision of the State of Indiana. The term "principal" for purposes of this CONTRACT means an officer, director, owner, partner, key employee, or other person with primary management or supervisory responsibilities, or a person who has a critical influence on or substantive control over the operations of the LOCAL GOVERNMENT.
- B. The LOCAL GOVERNMENT certifies that it has verified the state and federal suspension and debarment status for all subcontractors receiving funds under this CONTRACT and shall be solely responsible for any recoupment, penalties or costs that might arise from use of a suspended or debarred subcontractor. The LOCAL GOVERNMENT shall immediately notify the State if any subcontractor becomes debarred or suspended, and shall, at the State's request, take all steps required by the State to terminate its contractual relationship with the subcontractor for work to be performed under this CONTRACT.

**Section 21. Compliance with Telephone Solicitations Act**

As required by IC §5-22-3-7:

- (1) The LOCAL GOVERNMENT and any principals of the LOCAL GOVERNMENT certify that:
  - (A) The LOCAL GOVERNMENT, except for de minimis and nonsystematic

violations, has not violated the terms of:

- (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
  - (ii) IC §24-5-12 [Telephone Solicitations]; or
  - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];
- in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
- (B) The LOCAL GOVERNMENT will not violate the terms of IC §24-4.7 for the duration of the CONTRACT, even if IC §24-4.7 is preempted by federal law.
- (2) The LOCAL GOVERNMENT and any principals of the LOCAL GOVERNMENT certify that an affiliate or principal of the LOCAL GOVERNMENT and any agent acting on behalf of the LOCAL GOVERNMENT or on behalf of an affiliate or principal of the LOCAL GOVERNMENT, except for de minimis and nonsystematic violations,
- (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
  - (B) will not violate the terms of IC §24-4.7 for the duration of the CONTRACT, even if IC §24-4.7 is preempted by federal law.

#### **Section 22. Ethics**

The LOCAL GOVERNMENT and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If the LOCAL GOVERNMENT has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the CONTRACT, the LOCAL GOVERNMENT shall ensure compliance with the disclosure requirements in IC §4-2-6-10.5 prior to the execution of this CONTRACT.** If the LOCAL GOVERNMENT is not familiar with these ethical requirements, the LOCAL GOVERNMENT should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If the LOCAL GOVERNMENT or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this CONTRACT immediately upon notice to the LOCAL GOVERNMENT. In addition, the LOCAL GOVERNMENT may be subject to penalties under IC §4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

#### **Section 23. Payments**

All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, the direct deposit by electronic funds transfer to the financial institution designated by the LOCAL GOVERNMENT in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this CONTRACT except as permitted by IC §4-13-2-20.

#### **Section 24. Employment Eligibility Verification**



As required by IC §22-5-1.7, the LOCAL GOVERNMENT swears or affirms under the penalties of perjury that the LOCAL GOVERNMENT does not knowingly employ an unauthorized alien. The LOCAL GOVERNMENT further agrees that:

- A. The LOCAL GOVERNMENT shall enroll in and verify the work eligibility status of all its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. The LOCAL GOVERNMENT is not required to participate should the E-Verify program cease to exist. Additionally, the LOCAL GOVERNMENT is not required to participate if the LOCAL GOVERNMENT is self-employed and does not employ any employees.
- B. The LOCAL GOVERNMENT shall not knowingly employ or contract with an unauthorized alien. The LOCAL GOVERNMENT shall not retain an employee or contract with a person that the LOCAL GOVERNMENT subsequently learns is an unauthorized alien.
- C. The LOCAL GOVERNMENT shall require its contractors, who perform work under this CONTRACT, to certify to the LOCAL GOVERNMENT that the contractor does not knowingly employ or contract with an unauthorized alien and that the contractor has enrolled and is participating in the E-Verify program. The LOCAL GOVERNMENT agrees to maintain this certification throughout the duration of the term of a contract with a contractor.

The State may terminate for default if the LOCAL GOVERNMENT fails to cure a breach of this provision no later than thirty (30) days after being notified by the State.

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Non-collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is the properly authorized representative, agent, member or officer of the LOCAL GOVERNMENT. Further, to the undersigned's knowledge, neither the undersigned nor any other member, employee, representative, agent or officer of the LOCAL GOVERNMENT, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this CONTRACT other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC §4-2-6-1, has a financial interest in the CONTRACT, the LOCAL GOVERNMENT attests to compliance with the disclosure requirements in IC §4-2-6-10.5.**

In Witness Whereof, the LOCAL GOVERNMENT and the State have, through their duly authorized representatives, entered into this CONTRACT. The Parties having read and understand the forgoing terms of this CONTRACT, do by their respective signatures dated below agree to the terms thereof.

**Tippecanoe County Commissioners**

\_\_\_\_\_  
Signature

**David Byers**

\_\_\_\_\_  
Printed Name

**President**

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

**Tracy Brown**

\_\_\_\_\_  
Printed Name

**Vice President**

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**Tippecanoe County Auditor**

\_\_\_\_\_  
Signature

**Thomas Murtaugh**

\_\_\_\_\_  
Printed Name

**Member**

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

\_\_\_\_\_  
Signature

**Robert Plantenga**

\_\_\_\_\_  
Printed Name

**Attest**

\_\_\_\_\_  
Title

Date: \_\_\_\_\_

**STATE OF INDIANA**  
**Indiana Department of Transportation**

Recommended for approval by:

\_\_\_\_\_  
Steve Duncan, Director  
Contract Administration

Date: \_\_\_\_\_

Executed by:

\_\_\_\_\_ (for)  
Michael Smith, Commissioner

Date: \_\_\_\_\_

**State Budget Agency**

\_\_\_\_\_ (for)  
Zachary Q. Jackson, Director

Date: \_\_\_\_\_

**Department of Administration**

\_\_\_\_\_ (for)  
Rebecca Holwerda, Commissioner

Date: \_\_\_\_\_

**Attorney General**

\_\_\_\_\_ (for)  
Theodore E. Rokita, Attorney General

Date: \_\_\_\_\_

